IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 23988 of 2004

Between:

B.Rama Swamy S/o.Sri Lingaiah, Lingareddipally Village, Siddipet Mandal, Medak Dist.

..... PETITIONER

AND

1 The Government of A.P., Rep by its Principal Secretary,
Panchayat Raj And Rural Development, A.P. State Secretariat, Hyderabad.
2. The District Collector, Panchayat Raj Wing, Medak Dist
Sangareddy.
3. The District Panchayat Officer, Medak District, Sangareddy.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more particularly one in the nature of writ of Certiorari, calling for the records in the proceedings of the first Respondent in G.O.Rt.No.1920 Panchayat Raj and Rural Development (PTS.II) Department, dt 9-12-2004, and to quash the proceedings of the first Respondent in G.O.Rt.No.1920, Panchayat Raj and Rural Development (PTS.II) Department, dt 9-12-2004, as illegal, contrary to law and as vitiated by the errors apparent on the face of record, and pass such other order or orders.

Counsel for the Petitioner: MR.M.V.DURGA PRASAD

Counsel for the Respondent No.: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following:

ORAL ORDER:

On the basis of a representation dated 03.07.2003 made by the Upa-Sarpanch and M.P.T.C. of Lingareddypalli village, and the report of the Divisional Panchayat Officer dated 19.07.2003, a show cause notice dated 30.08.2003 was issued to the petitioner and after considering the reply of the petitioner, second respondent [Collector (Panchayat Wing) Medak District], by his proceedings dated 09.10.2003, placed the petitioner under suspension for a period of three months with immediate effect on three grounds i.e. (1) On 11-04-2002, Rs.7,600/- was spent for purchase of pipes without recording in the M.B; (2) On 22-07-2002, Rs.19,740/- was spent for drilling of Bore-well, without prior sanction from the Collector (2nd respondent); and (3) On 17-05-2003, Rs.30,000/- was spent for purchase of PWS motors without prior sanction from the Collector (2nd respondent).

2. Questioning the said order of suspension petitioner preferred a revision to the Government. That revision was dismissed, by the order impugned in this petition, with a direction that if there is any misappropriation, action as per the provisions of the A.P. Panchayat Raj Act, 1994 (the Act), may be taken against the petitioner.

3. The contention of the learned counsel for the petitioner is that in view of the proceedings No.20/2002/A3-p dated 25.04.2002 issued by the second respondent, in which it is stated that as per the Government Orders No.69, Panchayat Raj, dated 29.02.2000, whenever there is scarcity of water, 15% net income of the Gram Panchayat, as per the budget for the financial year
2002-03, can be utilized for providing water supply, after obtaining sanction from the Divisional Panchayat Officer and consent from the Gram Panchayat committees, subject to the condition that those amounts should be disbursed as per the M.B.

Records and N.M.R. being strictly conducted, due to scarcity of water in the panchayat area, petitioner spent the amounts for purchase of Pipes; digging of bore wells and purchase of PWS motors, after following the procedure in the Memo dated 25.04.2002 of the second respondent, non-obtaining of prior sanction from the Collector cannot be said to be irregular or improper, and so petitioner should not have been visited with the penalty of suspension, without recording any reasons and without properly applying his mind into the allegations made and the Government also was in error in mechanically dismissing the revision, and that that is so would be evident from the documents produced by the petitioner along with the writ petition, as they clearly show that the amounts spent by the petitioner were in fact noted in the M.B., and since the petitioner was placed under suspension only to facilitate the Upa-Sarpanch, at his behest, for him to act as Sarpanch, and so the order placing the petitioner under suspension is motivated.

4. The contention of the learned Government Pleader is that since Rule 42 of the Rules framed in G.O.Ms.No.30, PR, RD & R., Dated 20-1-1995 (Certain Taxes & Other Lodging Of moneys received by the Gram Panchayat and Payments of moneys from the Gram Panchayat Fund), empowers the District Panchayat Officer, to prohibit any executive authority from drawing moneys for the period specified in the order after giving an opportunity of being heard and for the reasons to be recorded in writing, the District Panchayat Officer having found some irregularities committed the petitioner, having withdrawn the cheque drawing power of the petitioner, issued a show cause notice No.1100/2003/A2-Pts., dated 28.07.2003 to the petitioner pointing out the following irregular expenditure.

Date	Amount incurred	Purpose	Objection
11-4-2002	7600-00	Purchase of pipes	No voucher, No MB, No stock
11-4-2002	812-00	Stationary	No voucher, No stock
18.7.2002	8662-00	Electrical material	No stock
18.7.2002	1400-00	Bore testing charges	No voucher
18.7.2002	2396-00	Gate wall and material	No M.B., No stock
22.7.2002	19740-00	Drilling of bore well	No M.B.
9.9.2002	2045-00	Motor repair	No M.B.
9.9.2002	1558-00	Water supply material	No voucher, No stock

and the following irregular drawing of amounts

Cheque No.	Date	Amount	Purpose
678595	5.5.2003	Rs.12,170-00	Self cheque

678596	6.5.2003	Rs.21,200-00	M/s.SrinivasPharmacy
678597	6.5.2003	Rs.38,839-00	Self cheque
678598	17.5.2003	Rs.30,000-00	M/s. Mounika Engg. Siddipet
678598	17.5.2003	Rs.4947-00	Self cheque
678600	2.6.2003	Rs.47,243-00	Self cheque
	TOTAL	**Rs.1,54,399-00**	

and his not showing the cash book from 1.4.2003 to 17.7.2003 to the Members in the meeting, had after receiving the explanation from the petitioner on 31.07.2003, pending consideration of his reply to the show cause notice, restored the cheque drawing power of the petitioner with the counter signature of Divisional Panchayat Officer, in order to run the day to day administration, and thereafter second respondent, after issuing a show cause notice dated 30.08.2003 to the petitioner under Section 249(6) of the Act, and considering the explanation of the petitioner, had placed the petitioner under suspension, no irregularity can be said to have been committed by the second respondent in placing the petitioner under suspension. It is his contention that since petitioner did not obtain sanction of the competent authority before incurring the expenditure and failed to make entries in the M. Book, petitioner is not entitled to any relief.

5. In my considered opinion, respondents taking the aid of the show cause notice dated 28.07.2003 said to have been issued by the District Panchayat Officer, to sustain the order of suspension of the petitioner is not proper, because in his order dated 09.10.2003 passed by the second respondent, placing the petitioner under suspension, irregularities detailed in the show cause notice dated 28.07.2003 issued by the District Panchayat Officer are not made the grounds for suspension of the petitioner. Even if the 2nd respondent was made aware of the notice dated 28.07.2003 issued by the District Panchayat Officer to the petitioner, prima facie, it has to be taken that second respondent was satisfied with the explanation offered by the petitioner, and that must be the reason for the second respondent not referring to those alleged irregularities in his order dated 09.10.2003 placing the petitioner under suspension.

6. Nine irregularities said to have been committed by the petitioner are pointed out in the show cause notice dated 30.08.2003 issued to the petitioner under section 249(6) of the Act, as seen from the counter affidavit of the 3rd respondent filed on

behalf of respondent. But, since the final order 09.10.2003 passed by the 2nd respondent refers only to three irregularities as grounds for his suspension, the remaining six irregularities mentioned in the show cause notice dated 30.08.2003, should be deemed to have been satisfactorily explained by the petitioner. Therefore, the point for consideration is whether the action of the second respondent in placing the petitioner under suspension for the three irregularities mentioned in the order dated 09.10.2003 is proper or not?

7. Though petitioner made a reference to the proceedings dated 25.04.2002 issued by the 2nd respondent that 15% of the budget amount of the Panchayat for 2002-03 can be spent in case of emergency for drawing water, and alleged that he, after obtaining sanction from the Divisional Panchayat Officer and after the Panchayat Committee had on 29.04.2003 resolved to purchase had fixed 5 (five) Plowell Single Phase Pump sets in Lingareddipalli village due to scarcity of water by spending Rs.88,575/-, and that proposal of the Panchayat Committee was forwarded by the Divisional Panchayat Officer to the second respondent vide his letter dated 11.08.2003, only had incurred the expenditure mentioned in the order of suspension passed by the second respondent, those allegations are not denied or disputed in the counter affidavit of the 3rd respondent filed on behalf of the respondents. So, it has to be taken that the expenditure incurred by the petitioner for purchase of pipes, motors and drilling of bore wells, prima facie, is in accordance with the memo dated 25.04.2002 issued by the 2nd respondent.

8. From the order of suspension dated 09.10.2003 passed by the 2nd respondent it is seen that in respect of purchase of pipes for Rs.7,600/- vouchers are available but M.B. is not recorded. In respect of the two other items there is M.B. noting. The allegation is that inasmuch as the purchase and execution of work covered by those two items is without prior permission of 2nd respondent, it is irregular more so because there is no check measurement in respect of advance purchase of PWS motors. As stated earlier, in view of the memo dated 25.04.2002 of the 2nd respondent, petitioner not obtaining prior sanction of the 2nd respondent, prima facie, may not be irregular. The other irregularity is in not making M.B. entry in respect of one work and not check measuring the another work.

9. It is well known that suspension during enquiry into allegations is only to see that the delinquent does not tamper with the evidence. Since the amount spent by petitioner, which is said to be irregular, is known, and since the other irregularities allegedly committed by the petitioner are not making M.B. entry and not check measuring the work, even without keeping the petitioner under suspension, the reasons for those irregularities can be investigated into. Unless there are strong grounds, for this type of minor procedural irregularities, suspensions, usually, would not be resorted to.

10. It is the specific case of the petitioner that Upa-Sarpanch, in an attempt to usurp the office of Sarpanch, brought pressure on the authorities to keep him under suspension. In the circumstances stated above, there is every reason to believe that the apprehension of the petitioner that the authorities acted at the behest of the Upa-Sarpanch may be true, because in the order of suspension dated 09.10.2003 passed by the 2nd respondent there is a reference to the representation of the Upa-Sarpanch dated 03.07.2003. Therefore, it is clear that proceedings dated 09.10.2003 of the second respondent placing the petitioner under suspension and confirmed by the Government, in revision are vitiated by mala fides and hence are liable to be and consequently are set aside.

11. The petition accordingly is allowed and the Rule Nisi is made absolute, clarifying that this order does not prevent or preclude the respondents from proceeding against the petitioner in accordance with the provisions of the Act and the Rules made thereunder for the irregularities allegedly committed by him. No costs.

(C.Y.Somayajulu, J.)

Date: 07.03.2005

Cvrk

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday the Seventh day of March, Two thousand and Five.

ASST. REGISTRAR

To

1. The Principal Secretary, Panchayat Raj And Rural Development, A.P. State Secretariat, Hyderabad.
2. The District Collector, Panchayat Raj Wing, Medak Dist Sangareddy.
3. The District Panchayat Officer, Medak District, Sangareddy.
4. 2 CCs to the G.P. for Panchayat Raj and Rural Dev. (OUT)
5. 2 CD copies
6. 1 CC to MR.SATYAM REDDY